

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

KENNETH V. AWE,

Petitioner,

v.

GRANT COUNTY WISCONSIN CIRCUIT 2,

Respondent.

ORDER

10-cv-413-bbc

Petitioner Kenneth Awe, a prisoner at the Greensville Correctional Center in Jarratt, Virginia, has filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. He requests leave to proceed in forma pauperis. Although petitioner has supported his request with an affidavit of indigency, I cannot determine whether petitioner is indigent for the purpose of filing a § 2254 petition until he submits a trust fund account statement for the six-month period immediately preceding the filing of his habeas corpus petition. See Longbehn v. U.S., 169 F.3d 1082 (7th Cir. 1999).

The petition was filed on July 23, 2010. Petitioner's trust fund account statement should cover the period beginning approximately January 22, 2010 and ending approximately July 23, 2010. Instead, the statement petitioner submitted covers only a one-

month period for April 2010.

In determining whether a petitioner is indigent for the purpose of filing a § 2254 petition, this court calculates the average monthly deposits and the average monthly balances in the petitioner's prison account for the six-month period mentioned above. If 20% of the greater of these two figures is \$5 or more, then the petitioner is not eligible for indigent status and must prepay all of the \$5 filing fee. If 20% of the greater of these two figures is less than \$5, the petitioner must prepay whatever portion of \$5 the 20% calculation works out to be.

Because I cannot determine whether petitioner qualifies for indigent status, I will stay a decision on his request for leave to proceed in forma pauperis until he files supplemental trust fund account statements for the missing periods. Alternatively, if petitioner knows he will not qualify for indigent status in light of the manner the in forma pauperis statute requires his indigence to be determined, he may submit the \$5 filing fee. In any event, petitioner should act quickly. If, by August 16, 2010, petitioner does not submit either the \$5 payment or the required supplemental trust fund account statements, his request for leave to proceed in forma pauperis will be denied and this action will be closed.

ORDER

IT IS ORDERED that petitioner Kenneth Awe's request for leave to proceed in forma

pauperis in this case is STAYED. Petitioner may have until August 16, 2010, in which to submit (1) a statement beginning approximately January 22, 2010 and ending approximately March 31, 2010, and (2) a statement beginning approximately May 1, 2010 and ending approximately July 23, 2010. Alternatively, petitioner may have until August 16, 2010, in which to pay the \$5 fee for filing his petition. If, by August 16, 2010, petitioner does not pay the filing fee or submit the required trust fund account statement, the clerk of court is directed to close this case for petitioner's failure to prosecute.

Entered this 28th day of July, 2010.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge